

FCC MAIL SECTION

Federal Communications Commission

FCC 98-60

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DISPATCHED
Before the
Federal Communications Commission
Washington, D.C. 20554

In re)	
)	
JOSEPH FRANK PTAK)	CIB Docket No. 98-44
San Marcos, Texas)	
)	
Order to Show Cause Why a)	
Cease and Desist Order Should Not Be Issued)	

**ORDER TO SHOW CAUSE AND
NOTICE OF OPPORTUNITY FOR HEARING**

Adopted: April 2, 1998

Released: April 6, 1998

By the Commission:

1. The Commission has under consideration information concerning the transmission of radio signals without a license by Joseph Frank Ptak ("Ptak"). For the reasons that follow, we order Ptak to show cause, pursuant to Section 312(c) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 312(c), why we should not issue a cease and desist order which prohibits further unauthorized transmissions on his part. Also, pursuant to Section 1.80(g) of the Commission's Rules (the "rules"), 47 C.F.R. § 1.80(g), this order constitutes a notice of opportunity for hearing to determine whether, in addition to or as an alternative to the issuance of a cease and desist order, a forfeiture should be imposed for violations of the Act and rules.

2. **Background.** On April 9, 1997, Loyd P. Perry ("Perry"), one of the Houston, Texas, resident agents of the Commission's Compliance and Information Bureau ("CIB"), received information from the San Marcos (Texas) Police Department concerning an unauthorized radio station operating on 105.9 MHz. Perry and CIB Dallas Director James D. Wells ("Wells") proceeded to the San Marcos area in mobile automatic direction finder ("MADF") unit FC-660. About 10 miles south of San Marcos, Perry and Wells detected a radio signal on 105.9 MHz, which increased in strength as they approached San Marcos. Further monitoring led Perry and Wells to conclude that the signal originated from a vertical dipole antenna mounted on a tower situated on the grounds of a residence located at 505 Patricia Drive, San Marcos. Further, considering the height above ground of the antenna and the distance from the antenna to the location where they first detected the signal, Perry and Wells concluded that the signal strength exceeded 250 μ V/m at 3 meters, the limit for unlicensed operation as set forth in Section 15.239(b) of the rules, 47 C.F.R. § 15.239(b).

3. At approximately 3:18 p.m., Perry and Wells heard a signal identified as "KIND" on 105.9 MHz. At approximately 3:29 p.m., Perry and Wells, accompanied by San Marcos Police Officer Royce Smith, entered upon the property at 505 Patricia Drive and asked to speak with the owner. Ptak identified himself as such. Perry then requested permission to inspect the radio transmission equipment to which Ptak granted his request.

4. In a bedroom of the residence, Perry and Wells observed a transmitter with a cable exiting a window. The cable, in turn, was connected to a vertical dipole antenna mounted on a 25 to 30 foot tower adjacent to the rear of the residence. An unconnected wattmeter was located next to the transmitter. Ptak then acknowledged the following: 1) there is no license for the facilities; 2) the transmitter output was 30 watts; 3) operation had begun on March 26, 1997, and had continued 24 hours per day since March 26; and 4) the station was operated by the Hayes County Guardian newspaper and staffed with volunteers. Perry, thereupon, orally advised Ptak that operation of the radio station violated federal law, and he ordered Ptak to cease operations. Ptak refused. Thereafter, at 4:00 p.m. on April 9, Perry and Wells again identified the source of a signal on 105.9 MHz as the facilities observed at 505 Patricia Drive.

5. On April 17, 1997, Perry sent a letter under his signature by certified mail to Ptak. In pertinent part, the letter stated:

Operation of radio transmitting equipment, other than certain low powered devices operated in accordance with Part 15 of the Rules, may be operated only upon issuance by this Commission of a station license. Unlicensed operation is a violation of Section 301 of the Act, 47 U.S.C. §301, and may subject the operator to substantial monetary fines, *in rem* forfeiture action, and criminal sanctions including imprisonment. See 47 U.S.C. §§ 401, 501, 503, 510. Because unlicensed operation creates a danger of interference to important radio communications services and may subject the operator to severe penalties, we emphasize the importance of complying strictly with the legal requirements mentioned above. **Operation of radio transmitting equipment without proper authority granted by the Commission should *cease immediately*.** (emphasis in the original).

The letter also informed Ptak that he need not reply but, if desired, he could submit relevant information to Perry. Commission records reveal no response from Ptak.

6. By a letter dated May 12, 1997 and transmitted via facsimile on May 13, 1997, a further complaint from the San Marcos Police Department concerning Ptak's unlicensed operation was received by Perry. Among other things, the complaint reflected that unauthorized transmissions by Ptak were continuing. Perry's investigations indicated that the unauthorized transmissions by Ptak were still ongoing. On March 20, 1998, using direction finding techniques, Perry confirmed that Ptak was continuing to operate.

7. **Discussion.** Section 301 of the Act, 47 U.S.C. § 301, provides in pertinent part:

It is the purpose of this Act, among other things, to maintain the control of the United States over all the channels of radio transmission No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any State . . . to another place in the same State . . . except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.

Anyone transmitting radio transmissions in the United States must have authority from the Commission to do so. See U.S. v. Medina, 718 F. Supp. 928 (S.D. Fla. 1989); U.S. v. Weiner, 701 F.Supp. 15 (D.Mass. 1988), aff'd, 887 F.2d 259 (1st Cir. 1989); Stephen Paul Dunifer, 11 FCC Rcd 718, 720-21, ¶¶ 7-9 (1995) (regarding Commission's licensing requirement); and Order to Show Cause and Notice of

Apparent Liability, 50 Fed. Reg. 20603, published May 17, 1985 (Alan H. Weiner). As the facts recited above reflect, it appears that Ptak has violated and may currently be violating Section 301 of the Act.

ORDERING CLAUSES

8. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 312(c) of the Act, Joseph Frank Ptak **IS DIRECTED TO SHOW CAUSE** why he should not be ordered to **CEASE AND DESIST** from violating Section 301 of the Act, at a hearing to be held at a time and location specified in a subsequent Order, upon the following issues:

1. To determine whether Joseph Frank Ptak has transmitted radio energy without appropriate authorization in violation of Section 301 of the Act.
2. To determine whether, based on the evidence adduced pursuant to the preceding issue, Joseph Frank Ptak should be ordered to cease and desist from violating Section 301 of the Act.

9. **IT IS FURTHER ORDERED** that, pursuant to Section 312(d) of the Communications Act of 1934, as amended, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Compliance and Information Bureau with respect to issues 1 and 2.

10. **IT IS FURTHER ORDERED** that this Order to Show Cause shall constitute a Bill of Particulars with respect to all foregoing issues.

11. **IT IS FURTHER ORDERED** that, to avail himself of the opportunity to be heard, Joseph Frank Ptak, pursuant to Section 1.91(c) of the rules, in person or by attorney, **SHALL FILE** in triplicate with the Commission within twenty (20) days of the mailing of this Order, a written appearance stating that he will appear at the hearing and present evidence on the matters specified in this Order.

12. **IT IS FURTHER ORDERED** that, without regard as to whether the hearing record warrants an order that Joseph Frank Ptak cease and desist from violating the Act or the rules, it shall be determined, pursuant to Section 503(b) of the Act, whether an **ORDER FOR FORFEITURE** in an amount not to exceed \$11,000¹ shall be issued against Joseph Frank Ptak for the alleged violations of Section 301 of the Act.

13. **IT IS FURTHER ORDERED** that in connection with the possible forfeiture liability noted above, this document constitutes a notice of opportunity for hearing pursuant to Section 503(b) of the Act and Section 1.80 of the rules.

14. **IT IS FURTHER ORDERED** that a copy of each document filed in this proceeding subsequent to the date of adoption of this Order **SHALL BE SERVED** on the counsel of record appearing

¹ This figure reflects the maximum appropriate forfeiture amount in light of the specific facts at issue. See 47 U.S.C. § 503(b)(2)(C); 47 C.F.R. §§ 1.80(b)(3), (b)(4), (b)(5); see also In re the Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, 12 FCC Rcd 17087 (1997)(petitions for reconsideration pending).

on behalf of the Chief, Compliance and Information Bureau. Parties may inquire as to the identity of such counsel by calling the Compliance and Information Bureau at (202) 418-1100, TTY (202) 418-2544. Such service **SHALL BE ADDRESSED** to the named counsel of record, Compliance and Information Bureau, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

15. **IT IS FURTHER ORDERED** that the Office of Public Affairs, Reference Operations Division of the Commission send a copy of this Order by Certified Mail - Return Receipt Requested to:

Joseph Frank Ptak
505 Patricia Drive
San Marcos, Texas 78666

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary